

CHAPTER 20

HEARINGS BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL BOARD

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.1997 d.158, effective March 10, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Executive Order No. 66(1978) Expiration Date

Chapter 20, Hearings before the Public Employment Relations Appeal Board, expires on March 10, 2002.

Chapter Historical Note

Chapter 20, Rules of Special Applicability for Hearings before the Public Employment Relations Appeal Board, was adopted as R.1983 d.305, effective August 1, 1983. See: 14 N.J.R. 862(a), 15 N.J.R. 1243(b). Chapter 20 was repealed and a new Chapter 20, Hearings Before the Public Employment Relations Appeal Board, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 20 was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

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SUBCHAPTER 1. APPLICABILITY

1:20-1.1 Applicability

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative

Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2.7 DEFINITIONS

1:20-2.1 Definitions

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING

1:20-3.1 Commencement of proceeding before the Appeal Board

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

1:20-3.2 Who may commence a proceeding before the Appeal Board

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

SUBCHAPTERS 4 THROUGH 5. (RESERVED)

SUBCHAPTER 6. PLEADINGS

1:20-6.1 Time for filing of petition; exhaustion of demand and return system

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

1:20-6.2 Time for filing answer

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

1:20-6.3 Contents of petition

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, P.O. Box 429, Trenton, NJ 08625.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

2. The full name and address of the majority representative of the nonmember's collective negotiations unit;

3. The full name and address of the public employer of the nonmember filing the petition;

4. The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

1:20-6.4 Contents of answer

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

1:20-7.1 Filing of petition and copies

A petitioner shall file an original and four copies of the petition with the Appeal Board.

1:20-7.2 Service of petition upon majority representative

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

1:20-7.3 Petition to public employer

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer, normally posted. The copies of the petition shall remain posted for a period of 30 days.

1:20-7.4 Filing of answer and copies

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

1:20-7.5 Service of answer upon petition

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

SUBCHAPTER 8. TRANSMISSION OF CASES

1:20-8.1 Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

SUBCHAPTER 9. NOTICES

1:20-9.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

SUBCHAPTERS 10 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:20-14.1 Nature of hearing

The hearing shall be a plenary de novo proceeding.

1:20-14.2 Burden of proof

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

SUBCHAPTER 15. EVIDENCE

1:20-15.1 Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

SUBCHAPTERS 16 THROUGH 17. (RESERVED)

SUBCHAPTER 18. CONCLUSION OF HEARING

1:20-18.1 Oral argument on exceptions

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

1:20-18.2 Motion to reopen

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

SUBCHAPTERS 19 THROUGH 21. (RESERVED)